

Message Text

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ACTION STR-04

INFO OCT-01 ARA-06 EUR-12 EA-07 NEA-10 IO-13 ISO-00 STRE-00

AF-08 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00 EB-07

FRB-03 H-02 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05

PA-01 AID-05 CIEP-01 SS-15 ITC-01 TRSE-00 USIA-06

PRS-01 SP-02 FEAE-00 OMB-01 OIC-02 /138 W

----- 047323

R 241030Z MAY 76

FM USDEL MTN GENEVA

TO SECSTATE WASHDC 1549

INFO ALL EC CAPITALS 66

AMEMBASSY BRASILIA

AMEMBASSY BUENOS AIRES

AMEMBASSY CANBERRA

AMEMBASSY HELSINKI

AMEMBASSY MEXICO

AMEMBASSY NEW DELHI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY PRAGUE

AMEMBASSY BUDAPEST

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

AMEMBASSY WARSAW

AMEMBASSY WELLINGTON

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ACTION STR

H PASS CODEL

E.O. 11652: N/A

TAGS: ETRD; MTN

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SUBJECT: NTM SUBGROUP MEETING ON STANDARDS

REF: (A) MTN GENEVA 3883 (NOTAL); (B) EC BRUSSELS 4336 (NOTAL)

1. SUMMARY: MTN/NTM SUBGROUP ON TECHNICAL BARRIERS TO TRADE MEETING OF MAY 17-21 MARKED BY SOME PROGRESS ON DEFINITIONS, OBVIOUS LACK OF EC COMMITMENT TO EARLY CODE COMPLETION, AND SEVERAL NEW PROPOSALS. CANADIAN FIXATION WITH BASIC DRAFTING OF DEFINITIONS AND EC AND NORDIC INFLEXIBILITY ON METHOD OF PRESENTATION NOT HELPFUL. SUBGROUP DISCUSSED CODE COVERAGE, RETROACTIVITY, A POSSIBLE GENERAL ESCAPE CLAUSE, BALANCE OF CODE OBLIGATIONS, AND DISPUTE SETTLEMENT/ENFORCEMENT. SUBGROUP AGREED THAT AGRICULTURAL REVIEW OF CODE SHOULD PROCEED WITHOUT DELAY AND THAT WORK OF STANDARDS SUBGROUP WILL GO FORWARD INDEPENDENTLY. END SUMMARY.

2. DEFINITIONS. SUBGROUP AGREED TO USE EXISTING ECE/ISO (ECONOMIC COMMISSION FOR EUROPE/INTERNATIONAL ORGANIZATION FOR STANDARDIZATION) DEFINITIONS AS BASIS FOR CODE DEFINITIONS.

3. DISAGREEMENT REMAINS REGARDING PRECISE WORDING AND PRESENTATION. ONE METHOD, ADVOCATED CHIEFLY BY EC (SCHLOSSER) AND NORDICS (STALBERG) WOULD USE EC DEFINITIONS VERBATIM, WITH FOOTNOTES. A SECOND METHOD, WITH WHICH U.S. (KELLY) IS ASSOCIATED, WOULD MAKE MINIMUM CHANGES IN ECE/ISO DEFINITIONS IN ORDER TO ELIMINATE NEED FOR FOOTNOTES. A THIRD METHOD, ADVOCATED BY CANADA (DENIS), WOULD REDRAFT DEFINITIONS BUT WITH MUCH GREATER DEVIATION FROM ECE/ISO LANGUAGE.

4. IN ATTEMPT TO SURMOUNT IMPASSE REGARDING SUBGROUP CHOICE OF METHOD, SUBGROUP AGREED TO ASK DEFINITIONS EXPERT BERGHOLM (FINLAND) TO PREPARE DOCUMENT DESCRIBING DIFFERENCES, AND REASONS THEREFORE, BETWEEN PRESENT ECE/ISO DEFINITIONS AND EXISTING DRAFT SET OF CODE DEFINITIONS COMPILED ACCORDING TO SECOND METHOD. U.S., EC, POLAND, AND CZECHOSLOVAKIA INDICATED SUPPORT OF SUCH APPROACH. COMMENT: U.S. EXPECTS THIS WILL PAVE WAY FOR EVENTUAL ACCEPTANCE OF SECOND METHOD BY SUB-LIMITED OFFICIAL USE

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GROUP. END COMMENT.

5. COVERAGE OF CODE. U.S., AS INSTRUCTED, AGAIN ADVANCED PROPOSAL THAT CODE COVER "PROCESSES AND PRODUCTION METHODS" WHEN NECESSARY TO ASCERTAIN THE QUALITIES OF A PRODUCT. EC INDICATED SUCH PROCESSES AND METHODS APPLY NOT ONLY TO AGRICULTURAL STANDARDS BUT ALSO INDUSTRIAL STANDARDS. BRAZIL EXPRESSED CONCERN THAT

U.S. AMENDMENT MIGHT LEAD TO INCREASED USE BY DEVELOPED COUNTRIES OF STANDARDS REQUIRING HIGHLY SOPHISTICATED PROCESSES OR PRODUCTION METHODS THAT MAY BE INCOMPATIBLE WITH EXISTING STAGE OF LDC DEVELOPMENT. U.S. RESPONDED THAT ITS AMENDMENT WOULD BRING SUCH PROCESSES OR PRODUCTION METHODS UNDER CODE, THEREBY REDUCING LIKELIHOOD OF THEIR USE AS OBSTACLES TO TRADE.

6. U.S. RESTATED DESIRABILITY OF EXCLUDING SINGLE COMPANY STANDARDS AND GOVERNMENT PROCUREMENT STANDARDS FROM CODE. DELEGATIONS GENERALLY SUPPORTED COMPANY STANDARDS EXCLUSION. SEVERAL DELEGATIONS, INCLUDING EC, PREFERRED DEFERRING DECISION ON GOVERNMENT PROCUREMENT EXCLUSION PENDING DELIBERATIONS OF NTM GOVERNMENT PROCUREMENT SUBGROUP. CANADA SUPPORTED THIS APPROACH IN DIRECT CONTRADICTION TO TIS POSITION AT U.S./ CANADA STANDARDS BILATERALS, REF (A).

7. RETROACTIVITY. IN LINE WITH U.S./EC AGREEMENT AT BRUSSELS BILATERAL (REF. B), U.S. PROPOSED REMOVAL OF "SELF ACCUSATION" REQUIREMENT THAT ADHERENTS UNILATERALLY REVIEW ALL STANDARDS PRACTICES AND CHANGE THOSE THAT ARE UNJUSTIFIABLE TRADE OBSTACLES. INSTEAD, U.S. AMENDMENT CALLS FOR EXAMINATION OF EXISTING STANDARDS PRACTICES ONLY UPON COMPLAINTS FROM OTHER ADHERENTS UNDER THE CODE DISPUTE SETTLEMENT PROCEDURES. GENERAL SUPPORT FOR U.S. APPROACH INDICATED BY EC, CANADA, SWEDEN, BRAZIL, AND SWITZERLAND.

4. ENFORCEMENT. MOST DELEGATIONS RESERVED THEIR POSITIONS ON QUESTION OF ENFORCEMENT, AND, CONSEQUENTLY, THERE WAS LITTLE DISCUSSION. HOWEVER, AUSTRALIA AND EC MADE PRESENTATION ON THIS TOPIC. AUSTRALIA SUB-LIMITED OFFICIAL USE

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MITTED LENGTHY STATEMENT ON COMPREHENSIVE CANADIAN AMENDMENT TO ENFORCEMENT PROVISIONS OF SECTION 21 TABLED AT LAST SUBGROUP MEETING. ALTHOUGH SUPPORTING OVERALL CANADIAN APPROACH TO ENFORCEMENT, AUSTRALIA FAVORS GREATER ASSURANCES OF PANELIST IMPARTIALITY AND TECHNICAL COMPETENCE, AND OF DUE PROCESS FOR PRINCIPLES INVOLVED IN DISPUTE SETTLEMENT. AUSTRALIA DISLIKES SANCTIONS PROVISIONS OF CANADIAN PROPOSAL BECAUSE SANCTIONS MAY CURTAIL TRADE LIBERALIZATION, AND BECAUSE OF INHERENT DIFFICULTY IN APPLYING SANCTIONS EFFECTIVELY AND EQUITABLE.

9. EC ALSO SUBMITTED AMENDMENT TO SECTION 21 AFFECTING COMPLAINTS BY ADHERENTS AGAINST A COUNTRY THAT IS A MEMBER OF A REGIONAL GROUP HAVING HARMONIZED RE-

GIONAL STANDARDS AND THAT HAS BEEN OBLIGED TO RAISE SEVERITY LEVEL IN A STANDARD TO CONFORM TO A NEW HARMONIZED REGIONAL STANDARD. ACCORDING TO EC PROPOSAL, ANY ASSESSMENT OF BENEFITS IMPAIRED SHOULD CONSIDER NOT ONLY POSSIBLE TRADE INHIBITING EFFECTS OF HARMONIZED STANDARD BUT ALSO TRADE LIBERALIZING EFFECTS IN COUNTRIES THAT LOWERED SEVERITY LEVEL PURSUANT TO SAME REGIONAL STANDARD; THAT IS, NET TRADE IMPACT OF REGIONAL STANDARD ON TOTAL REGION SHOULD BE CONSIDERED.

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INFO OCT-01 ARA-06 EUR-12 EA-07 NEA-10 IO-13 ISO-00 AF-08

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AMEMBASSY WARSAW

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10. ESCAPE CLAUSE. AUSTRALIA PROPOSED BROAD "ESCAPE CLAUSE" RELEASE FROM ALL OBLIGATIONS UNDER CODE.
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ACCORDING TO AUSTRALIA, THIS GENERAL SAFEGUARD PROVISION WOULD BE ANALOGOUS TO GATT ARTICLE XIX. SWEDEN POINTED OUT DISSIMILARITY WITH GATT ARTICLE XIX, WHICH DEALS WITH CONCRETE TRADE CONCESSIONS, WHILE PROPOSED STANDARDS CODE DEALS WITH NORMATIVE PROVISIONS.

11. RELATIONSHIP OF CODE TO GATT. THIS SUBJECT RAISED DURING DISCUSSIONS OF AUSTRALIAN SAFEGUARD PROPOSAL. MEXICO (A NON-GATT MEMBER) INDICATED DESIRE TO MAINTAIN CODE'S INDEPENDENCE FROM GATT. U.S. PROPOSED DELETION OF PROVISION THAT PRESERVES FOR CODE ADHERENTS ALL RIGHTS AND OBLIGATIONS UNDER GATT, BECAUSE U.S. BELIEVES THAT CODE OBLIGATIONS SHOULD NOT BE NEGATED BY CONFLICT WITH GATT RIGHTS.

12. BALANCE OF CODE OBLIGATIONS. IN EXPRESSION OF CONCERN THAT RIGHTS AND OBLIGATIONS UNDER CODE SHOULD BE BALANCED AS BETWEEN FEDERAL AND UNITARY GOVERNMENTS, JAPAN INTRODUCED FAR REACHING PROPOSAL TO EXPAND SUBSTANTIALLY OBLIGATIONS OF CENTRAL GOVERNMENTS REGARDING STANDARDS, TESTING, AND CERTIFICATION SYSTEMS OF STATE AND LOCAL GOVERNMENTS. IN PRELIMINARY COMMENT, U.S. POINTED OUT THAT ACCURATE ASSESSMENT OF CODE'S BALANCE COULD NOT BE MADE UNTIL MORE AGREEMENT REACHED ON CODE'S OPERATIVE PROVISIONS. U.S. ASKED JAPAN WHETHER IT COULD ASSUME OBLIGATIONS OF ITS OWN PROPOSAL. JAPAN REPLIED THAT IF AGREEMENT ON STANDARDS CODE IS REACHED, GOJ WOULD BE OBLIGED TO ENACT LAWS TO BE IN CONFORMITY WITH INTERNATIONAL AGREEMENT.

13. AGRICULTURAL REVIEW. IN VIEW OF AGREEMENT (MTN/NTM/1) BY NTM PARENT GROUP IN MARCH 1975 TO HAVE GROUP AGRICULTURE AND GROUP TROPICAL PRODUCTS REVIEW GENERAL APPLICABILITY OF CODE TO HEALTH AND SANITARY ASPECTS, SUBGROUP AGREED TO SUGGEST TO NTM PARENT GROUP THAT REVIEW TAKE PLACE WITHOUT DELAY. SUBGROUP ALSO AGREED THAT ITS OWN WORK WOULD PROCEED INDEPENDENTLY OF THIS REVIEW.

14. NATIONAL TREATMENT. PURSUANT TO YEUTTER/GALLAGHER
AGREEMENT (REF B.) KELLY AND SCHLOSSER MET PRIVATELY
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TO CONSIDER KEY ISSUE OF NATIONAL TREATMENT IN CERTI-
FICATION SYSTEMS. SCHLOSSER REPEATED FAMILIAR ARGU-
MENT THAT SYSTEMS MUST BE "OPERATIONAL" BEFORE THEY CAN
BE OPENED TO THIRD-COUNTRY SUPPLIERS, AND,

PERHAPS, EVEN TO ALL DOMESTIC SUPPLIERS. HE SAID, HOW-
EVER, THAT HE BELIEVED EC COULD ULTIMATELY AGREE TO
TEXT THAT WOULD SATISFY U.S. SERIOUS DISCUSSION OF
SUCH A TEXT WOULD HAVE TO BE DEFERRED UNTIL OTHER KEY
ISSUES IN CODE WERE ALSO RESOLVED. ATTEMPT TO SETTLE
THIS ONE ISSUE, NOW, WOULD BE COUNTERPRODUCTIVE AS
SOLUTION SATISFACTORY TO U.S. WOULD NOT BE ACCEPTABLE
TO MEMBER STATES.

15. NEXT MEETING. AS SUBGROUP UNABLE TO AGREE ON DATE
OF NEXT MEETING CHAIRMAN WILL REQUEST DATE BE FIXED BY
NTM PARENT GROUP, NOTING THAT TWO ALTERNATIVE BE-
GINNING DATES WERE ADVANCED BY SUBGROUP -- OCTOBER
4 AND NOVEMBER 8. MEETING WOULD BE SCHEDULED
FOR ONE WEEK WITH UNDERSTANDING THAT IT WOULD CON-
TINUE DURING SECOND WEEK IF PROGRESS BEING ACHIEVED.
CULBERT

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Message Attributes

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